

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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DAVID FERGUSON, et al.,

Plaintiffs,

vs.

RYDER AUTOMOTIVE, et al.,

Defendants.  
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:  
: CASE NO.  
: C-1-02-039  
:  
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:

Deposition of: THOMAS HELLER  
Taken: By the Plaintiffs  
Pursuant to Agreement  
  
Date: March 13, 2003  
  
Time: Commencing at 2:26 p.m.  
  
Place: Kohen & Patton LLP  
1400 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202  
  
Before: Debra J. Henderson, RPR  
Notary Public -  
State of Ohio

Page 6

1 Q. So were you there on the day of the  
2 accident with Mr. Ferguson, September 7th of 2000?  
3 A. No, I was not there.  
4 Q. Okay. Do you know what happened to the  
5 cable that was involved in this accident?  
6 A. As far as I know, the cable broke.  
7 Q. Okay. Did you make any reports or take  
8 any reports or talk to Mr. Ferguson or anyone else --  
9 A. No.  
10 Q. -- that relates to the accident?  
11 A. No.  
12 Q. Do you know if Mr. Kelly did?  
13 A. No. I don't believe he did.  
14 Q. Now, the actual cable that broke, did  
15 you ever see it?  
16 A. Yes.  
17 Q. Okay. Where did you see it at?  
18 A. It was down in the south yard, where the  
19 accident occurred the next day.  
20 Q. Okay. So when you say "it was down in  
21 the south yard," was it in a building or where was  
22 it?  
23 A. No. It was just sitting out in the yard  
24 where it happened, where it fell off the truck.  
25 Q. So you saw it the next day sitting in

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1 the yard?  
2 A. Yeah.  
3 Q. And did it -- was it coiled up or how  
4 was it being kept?  
5 A. No. Well, it was just hanging there.  
6 Q. Hanging on the truck?  
7 A. Hanging on the truck.  
8 Q. Oh, okay. Did you see it after that,  
9 the actual cable that broke?  
10 A. No.  
11 Q. Do you know what happened to it?  
12 A. No. I have no idea.  
13 Q. Did you ever hear scuttlebutt of what  
14 happened to it?  
15 A. No.  
16 Q. No one said anything that so-and-so had  
17 it or so-and-so was using it?  
18 A. No.  
19 Q. Okay. You just saw it wrapped up on the  
20 truck?  
21 A. Right.  
22 Q. Correct?  
23 A. Correct.  
24 Q. Let me show you what has previously been  
25 marked as some exhibits. Plaintiffs' Exhibits A, B,

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1 C, D, E, F. I think we can just start with A,  
2 maybe.  
3 Exhibit A, is that what you saw wrapped  
4 up on the truck? Is that what you're talking about?  
5 A. Yeah. Uh-huh, yeah.  
6 Q. And Exhibit B is the same?  
7 A. Uh-huh.  
8 MR. WINTER: You have to say yes or no.  
9 A. Yes.  
10 Q. Okay. Did you take those pictures? Do  
11 you know who took the pictures?  
12 A. No. I don't know who took them, either.  
13 Q. Did you ever talk with Mike Palladino  
14 about the accident?  
15 A. The only time I talked to Mike was -- in  
16 relation to the cable is when these trucks had just  
17 come down out of Marian, and it was as to when these  
18 cables were going to be replaced in these trucks.  
19 Q. Okay. We will get to that, but did you  
20 ever talk to Mike Palladino about the actual cable  
21 after it was broken?  
22 A. No.  
23 Q. You had a conversation with him  
24 beforehand when the trucks came down from Marian?  
25 A. Yes.

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1 Q. Okay. Do you know when that was?  
2 A. No. No, I couldn't recall no date, no.  
3 Q. Do you know how far it was before  
4 Mr. Ferguson's accident?  
5 A. I really couldn't say offhand.  
6 Q. What was your conversation with  
7 Mr. Palladino?  
8 A. Well, it was just in relation to these  
9 trucks. We had probably ten trucks that had just  
10 been transferred down to Moraine from Marian, and it  
11 was in relation to the cables that had not been  
12 replaced on the trucks.  
13 Q. And what did you say?  
14 A. Well, about as far as contacting the  
15 shop to find out when these cables were going to be  
16 replaced.  
17 Q. And what did Mr. Palladino say?  
18 A. Well, we both had a discussion with the  
19 shop foreman.  
20 Q. Who was that?  
21 A. Bill Weaver.  
22 Q. And what was that discussion about?  
23 A. About the cables on these trucks that  
24 were coming down, being replaced, and he stated to us  
25 that the cables were on back order at that time. He

3 (Pages 6 to 9)

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1 A. No.  
 2 Q. Had you seen cables break before, other  
 3 than Mr. Fay's and Mr. Ferguson's?  
 4 A. No.  
 5 Q. And you weren't there the day of the  
 6 accident; is that correct?  
 7 A. No. Well, it happened in the evening.  
 8 I had done gone home.  
 9 Q. Okay. So the next day is the day that  
 10 you see the truck and hear about the accident,  
 11 correct?  
 12 A. Yes.  
 13 Q. And you saw the cables as they are there  
 14 in A and B?  
 15 A. Yes.  
 16 Q. I think that's A and B. Yeah. Exhibit  
 17 A and B, wrapped around. So the next day when it was  
 18 daylight, you could see that there, correct?  
 19 A. Yes.  
 20 Q. Okay. And did you have any conversation  
 21 then with Michael Palladino about Mr. Ferguson or the  
 22 truck?  
 23 A. Not that I recall. Well, yes, I did.  
 24 On -- I talked to him, contacted Mike about Dave.  
 25 You know, what they had done, if he was injured, and

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1 if they had sent him to the hospital.  
 2 Q. Okay. So you talked to Mike about that,  
 3 and he told you the situation as related to  
 4 Mr. Ferguson's injury?  
 5 A. Yes.  
 6 Q. But did you talk to him about the truck  
 7 itself or the trailer and the broken cable?  
 8 A. No.  
 9 Q. Okay. You said that was back on the  
 10 south lot. My understanding, the place didn't have a  
 11 repair building there, right?  
 12 A. No. Our shop was outside.  
 13 Q. Right. Okay. So who would have fixed  
 14 the truck the next day, put another cable on it?  
 15 MR. WINTER: Object to the form of the  
 16 question.  
 17 THE WITNESS: Please?  
 18 MR. WINTER: I objected to the form of  
 19 the question. Answer if you can.  
 20 A. The only one that repaired our trucks  
 21 was the shop, our shop.  
 22 Q. Okay. Mr. Weaver?  
 23 A. Well, one of his mechanics.  
 24 Q. Okay. Do you know if there was a --  
 25 strike -- that there's a record that shows that the

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1 cable was replaced the next day on the 8th? This  
 2 occurred on the 7th, you said, at night.  
 3 Do you know if -- on the 7th, if there  
 4 were cables in the shop to replace --  
 5 A. I -- no.  
 6 Q. You don't know one way or the other?  
 7 A. No.  
 8 Q. When it's back on the south lot, what  
 9 does that mean?  
 10 A. Well, we had two lots. We had our north  
 11 lot, which is actually where the maintenance office  
 12 and the shop was. And then our other -- the other  
 13 lot, the south lot, is where a lot of the trucks  
 14 load, and that's where he was loading his truck at  
 15 the time.  
 16 Q. And I take it when you saw the truck,  
 17 the truck hadn't moved from where the accident  
 18 occurred?  
 19 A. No, I don't believe so.  
 20 Q. So it was still sitting where he had  
 21 fallen off the truck?  
 22 A. Uh-huh.  
 23 Q. And what time on the 8th did you see it?  
 24 A. It was around -- probably 7:30,  
 25 8:00 a.m.

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1 Q. Was Mr. Palladino there that day, on the  
 2 8th?  
 3 A. Yes.  
 4 MR. KOUSTMER: I don't have any other  
 5 questions.  
 6 CROSS-EXAMINATION  
 7 BY MR. PAULUS:  
 8 Q. Do you know who Mr. Slag is?  
 9 A. Yes.  
 10 Q. Who is that?  
 11 A. He's the union steward of the drivers.  
 12 Q. Did he ever give you a list of trucks  
 13 that he needed replacement cables for?  
 14 A. I couldn't say. I couldn't say.  
 15 MR. PAULUS: That's all I have.  
 16 CROSS-EXAMINATION  
 17 BY MR. SCHOENI:  
 18 Q. Mr. Heller, my name is Roger Schoeni.  
 19 Did you ever have physical possession of the cable  
 20 that broke?  
 21 A. No.  
 22 Q. Who took physical possession of that  
 23 cable?  
 24 A. I really couldn't say.  
 25 Q. Has anyone ever told you what became of

5 (Pages 14 to 17)

# **EXHIBIT B**

DATE 07/24/02

TIME:10:57

UNIT DETAIL HISTORY LIST TERMINAL

UNIT NO	GROUP	ITEM NO	DESCRIPTION	LOC	DATE	RD NUM	METER	RS	POS	CLASS	SITE	TYPE	FC/WA	QTY	COST
ALZS61304	***	*****			01/01/50	*****	*****	**	***	*	*	*	**	*****	*****
					07/24/02		*****	**							
ALZS61304	310	42007008	FILTER WATERNEED RELEASE	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 31.54
ALZS61304	310	44002060	FUEL FILTER DAVCO	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 3.22
ALZS61304	310	45011038	FILTER OIL 94/ CUMMINS	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 28.92
ALZS61304	310	53998006	MISC EXPENSE	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 15.00
ALZS61304	310	65003063	FILTER HYDRAULIC (K22001	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 2.54
ALZS61304	310	93-L	HYDRAPAC PH "B" SERVICE	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 .00
ALZS61304	310	93001044	FILTER OIL	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 9.41
ALZS61304	310	93001047	FILTER FUEL	73	12/22/00	RD66894	398642	08			2	1	N	PH	1.00 2.32
ALZS61304	310	16006035	SHOCK	73	12/29/00	RD66894	398642	08	ALL		2	1	N	44	3.00 79.24
ALZS61304	310	53990001	OIL/ENGINE BULK	73	11/13/00		390445	00			1	4	N	00	4.00 9.11
ALZS61304	310	31-L7360	CHARGING SYS - TERM CHAR	73	11/15/00	RD48740	391193	04	ALT		2	1	N	99	.50 16.54
ALZS61304	310	93001044	FILTER OIL	73	11/15/00	RD48740	391193	04			2	1	N	PH	1.00 9.41
ALZS61304	310	93001047	FILTER FUEL	73	11/15/00	RD48740	391193	04			2	1	N	PH	1.00 2.29
ALZS61304	310	93-L7360	HYDRAPAC PH "B" SERVICE	73	11/15/00	RD48740	391193	04	HDP		2	1	N	08	1.00 33.28
ALZS61304	310	17-L7357	TIRE INSPECTION	73	11/18/00	1118031	391193	06	ALL		2	1		12	.50 16.44
ALZS61304	310	31-L7303	CHARGING EXCHG	73	11/29/00	1129011	391948	04			2	1		03	.50 16.44
ALZS61304	310	17-L7360	TIRE INSPECTION	73	10/09/00	RD28949	383849	04	ALL		2	1		12	.25 8.32
ALZS61304	310	34002129	FLASHER	73	10/09/00	RD28949	383849	04			2	1	N	38	1.00 11.15
ALZS61304	310	93-L7360	HYDRAPAC REPAIR IN PLACE	73	10/09/00	RD28949	383849	04			2	1		05	.20 6.25
ALZS61304	310	93-L7360	HYDRAPAC REPAIR IN PLACE	73	10/09/00	RD28949	383849	04			2	1		05	.30 9.98
ALZS61304	310	65		73	10/17/00	P073421	385328	05			2	4		41	1.00 30.80
ALZS61304	310	65-L	HYD LINES, RIP OR REPLAC	73	10/17/00	P073421	385328	05			2	4		05	1.00 31.00
ALZS61304	310	65-L	HYD LINES, RIP OR REPLAC	73	10/17/00	P073421	385328	05			2	4		05	1.00 120.00
ALZS61304	310	65-L	HYD LINES, RIP OR REPLAC	73	10/17/00	P073421	385328	05			2	4		05	1.00 120.00
ALZS61304	310	65-L	HYD LINES, RIP OR REPLAC	73	10/17/00	P073421	385328	05			2	4		05	1.00 120.00
ALZS61304	310	65		73	10/17/00	P073421	385328	05			2	4		01	1.00 2.00
ALZS61304	310	65		73	10/17/00	P073421	385328	05			2	4		41	1.00 30.80
ALZS61304	310	65		73	10/17/00	P073421	385328	05			2	4		01	1.00 2.00
ALZS61304	310	65		73	10/17/00	P073421	385328	05			2	4		41	1.00 30.80
ALZS61304	310	65		73	10/17/00	P073421	385328	05			2	4		01	1.00 2.00
ALZS61304	310	65		73	10/17/00	P073421	385328	05			2	4		01	1.00 305.60-
ALZS61304	310	65-L7303	HYD LINES, RIP OR REPLAC	73	10/20/00	RD36032	386373	04			2	1	N	44	1.00 33.28
ALZS61304	310	93001039	BELT ALT	73	10/20/00	RD36032	386373	04			2	1	N	38	1.00 7.53
ALZS61304	310	93001052	SOLENOID SHUT OFF	73	10/20/00	RD36032	386373	04			2	1	N	18	1.00 68.44
ALZS61304	310	93001076	PUMP WATER	73	10/20/00	RD36032	386373	04			2	1		05	1.00 78.29
ALZS61304	310	93-L7303	HYDRAPAC REPAIR IN PLACE	73	10/20/00	RD36032	386373	04			2	1		12	2.00 66.55
ALZS61304	310	17-L7303	TIRE INSPECTION	73	10/25/00	RD38233	387192	04	ALL		2	1		20	.25 8.32
ALZS61304	310	00-L	TOWING-VENDOR	73	09/01/00	P073522	378898	05			2	4		05	1.00 150.00
ALZS61304	310	32-L	CRANKING R.I.P.	73	09/01/00	P073522	378898	05			2	4		31	1.00 31.00
ALZS61304	310	PH-L	FEDERAL INSPEC	73	09/08/00	P073998	378920	08			2	4		PH	1.00 23.50
ALZS61304	310	PH		73	09/08/00	P073998	378920	08			2	4		10	1.00 17.25
ALZS61304	310	PH-L	PH10 - B-PH	73	09/08/00	P073998	378920	08			2	4		03	.50 129.25
ALZS61304	310	02-L7369	CAB;WIPER MOTOR,SWT,TRAN	73	09/08/00	RD11232	378995	24	HDR		2	1		12	1.00 16.64
ALZS61304	310	17-L	TIRE INSPECTION	73	09/08/00	P073998	378920	08			2	4		03	1.00 23.50
ALZS61304	310	32-L	CRANK REPLACE	73	09/08/00	P073998	378920	08			2	4		12	1.00 164.50
ALZS61304	310	55001276	SAFETY CABLEHD/RK LONG	73	09/08/00	RD11232	378995	24	BDT		2	1	N	12	2.00 111.42
ALZS61304	310	93-L	HYDRAPAC PH "B" SERVICE	73	09/08/00	P073998	378920	08			2	4		08	1.00 35.25
ALZS61304	310	32-L	CRANKING R.I.P.	97	09/14/00	P077308	379490	01			3	4		05	1.00 171.00
ALZS61304	310	32-L7360	BATTERY REPLACE ONLY	73	09/14/00	0914023	379871	04			2	1		44	1.00 33.28
ALZS61304	310	32001061	BATTERY DC R/P 32001030	73	09/14/00	0914023	379871	04			2	1	N	38	3.00 226.55
ALZS61304	310	01002035	MOTOR	72	09/15/00	RD14968	379670	04			2	1	N	01	1.00 76.07
ALZS61304	310	45-L	ENGINE R.I.P.	73	09/15/00	P073817	379670	01			3	4		05	1.00 31.00

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI

DAVID FERGUSON, ET AL.

Plaintiffs

v.

RYDER AUTOMOTIVE CARRIER  
SERVICES, INC., ET AL.

Defendants

Case No. C-1-02-039

Judge Herman Weber

AFFIDAVIT OF  
RICHARD H. SHIVELY

Affiant Richard H. Shively, after having first been duly cautioned and sworn, deposes and states as follows:

1. My name is Richard H. Shively. I am the same Richard H. Shively whose deposition was taken in the above-captioned action on February 20, 2003. I have personal knowledge of the facts contained within my affidavit.

2. I have recently been provided a copy of and have reviewed the Unit History Detail Listing on trailer no. 61304. A copy of that document is attached to my Affidavit as Exhibit A. The Unit History Detail Listing was not provided to me either before or at my deposition of February 20, 2003. I first saw it on August 6, 2003. The Unit History Detail Listing assists me with regard to the topics of identifying the maintenance mechanic who fixed the truck from which Mr. David Ferguson fell.

3. My review of the Unit History Detail List reveals that it was I who replaced two of trailer no. 61304's head ramp safety cables and a switch on September 8, 2000. I know this from that document because I performed Repair Order No. 011232 on tractor no. 61304 on September



8, 2000. That Repair Order consisted of performing those two maintenance activities. It would have been my standard practice to document the completed repairs and the parts used and sign off on the Repair Order on or shortly after the actions were completed on September 8, 2000.

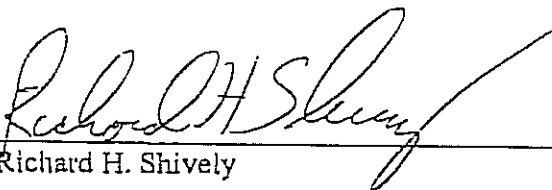
4. I do not have any present recollection of disposing either the head ramp safety cables or the switch on September 8, 2000. It would have been my standard practice to cut up the removed head ramp safety cables into pieces and discard them. I do not recall ever setting aside any of the head ramp safety cables that I replaced. I have no reason to believe that the head ramp safety cables that are the subject of my maintenance actions on September 8, 2000, were treated in any other manner.

5. Michael Palladino never requested that I provide him with any head ramp safety cables that had been broken. I never provided Michael Palladino with any broken head ramp safety cables, including those that had been replaced on tractor no. 61304 on September 8, 2000.

6. During 1999 and 2000, I had no knowledge of any type of ownership or business relationship between Allied Systems, Ltd. or Allied Automotive Group, Inc., and Consolidated Carriers, Inc. or any other company. I was never told by anyone that a reason for discarding the old style head ramp safety cables upon replacement was due to any ownership or business relationship that Allied Systems, Ltd. or Allied Automotive Group, Inc. might have had with any other company. I had no reason to believe that a reason for discarding the old style head ramp safety cables upon replacement was due to any ownership or business relationship that Allied Systems, Ltd. or Allied Automotive Group, Inc. might have had with any other company.

7. I was never told or influenced by anyone to dispose or discard any of the old style head ramp safety cables that had been replaced because of the possibility of litigation that might be brought due to the cable breaking.

8 Further, Affiant sayeth naught.

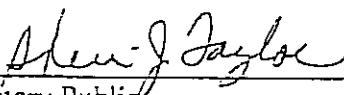
  
Richard H. Shively

STATE OF OHIO

)  
) SS: 367-62-7399  
)

COUNTY OF MONTGOMERY

Sworn to before me and subscribed in my presence, a notary public for the state and county aforesaid this \_\_\_\_ day of August 2003, by Richard H. Shively as his own free and voluntary act and deed.

  
Notary Public

SHERI J. TAYLOR, Notary Public

My commission expires: Mar. 29, 2004

In and for the State of Ohio  
My Commission Expires March 29, 2004

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing were served by depositing the same into the United States Mails, first class postage prepaid, on this 15 day of August 2003, to:

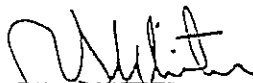
Thomas R. Koustmer, Esq.  
1800 Federated Building  
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Cincinnati, OH 45202

Michael J. Hornerlaw, Esq.  
Hornerlaw and Hornerlaw Co., L.P.A.  
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K. Roger Schoeni, Esq.  
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Leawood, KS 66211

Craig R. Paulus, Esq.  
Taft Stetinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202



Robert A. Winter, Jr.

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# **EXHIBIT D**

AFFIDAVIT

STATE OF GEORGIA       )  
                                      )  
COUNTY OF DEKALB     )

COMES NOW, **Bill McDaniel**, of sound mind and lawful age, and after being duly sworn deposes and says:

1. I am the Vice President, Claims Administration of USI of Georgia, which is an entity that acts as the third party administrator for liability and workers' compensation claims for Allied Systems, Ltd. and Allied Automotive Group, Inc., the managing general partner of Allied Systems, Ltd. (collectively "Allied"). I have been personally involved in administration of workers' compensation claims and employer liability claims for Allied since August 1997, first with Haul Risk Management Services, Inc., an entity that was affiliated with Allied, and later with the Claims Administration division of Allied Automotive Group, Inc. Since August , 1997, I have overseen and supervised all worker's compensation and employer liability claims for Allied.

2. I have personal knowledge of the matters set forth herein.

3. Since August 1997, I am aware of only one state or federal civil action in which either Allied Systems, Ltd. or Allied Automotive Group, Inc. has been sued as a result of an injury involving a fall from the headramp of an automotive carrier due to the alleged failure of a safety cable. That case is styled David E. Ferguson, et al. v. Ryder Automotive Carrier Services, Inc., et al., U.S. District Court, S.D. Ohio, West. Div., Case No. C-1-02-039.

FURTHER AFFIANT SAYETH NOT.

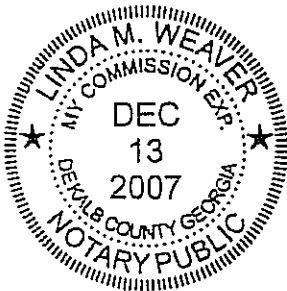
*William McDaniel*  
Bill McDaniel

Sworn to and subscribed before me this 14th day of August, 2003, by Bill McDaniel,  
who is personally known to me or who has produced N/A as identification.

*Linda M. Weaver*  
Notary Public (signature)

Linda M. Weaver  
Notary Public (print name)

(SEAL)



CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing were served by depositing the same into the United States Mails, first class postage prepaid, on this 15 day of August 2003, to:

Thomas R. Koustmer, Esq.  
1800 Federated Building  
7 West Seventh Street  
Cincinnati, OH 45202

Michael J. Honerlaw, Esq.  
Honerlaw and Honerlaw Co., L.P.A.  
9227 Winton Road  
Cincinnati, OH 45231

K. Roger Schoeni, Esq.  
Kohnen & Patton LLP  
PNC Center, Suite 800  
201 East Fifth Street  
Cincinnati, OH 45202

David E. Larson, Esq.  
Larson & Larson PC  
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Suite 310  
Leawood, KS 66211

Craig R. Paulus, Esq.  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202



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Robert A. Winter, Jr.

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